IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

WRIT PETITION NO : 20979 of 1995

Between:

Kamineni. Suryanarayana S/oLate Subbaiah,58 years,
R/o 5-9-261/2 &3, King Koti Road, Hyderabad.

..... PETITIONER

AND

1 The State of A.P. rep. by its Secretary Municipal Administation and Urban Development, Secretariat, Hyderabad.
2 The Special Dy. Collector, Land Acquisition Muncipal Corporation of Hyderabad. Tank Bund, Hyderabad.
3 The Principal Secretary Housing and Municipal Administration Government of A.P. Secretariat, Hyderabad.
4 The Chairman Municipal Corporation of Hyderabad, Hyderabad
5 The Assistant City Planer, Municipal Corporation of Hyderabad, Circle-VI, Putlibowli, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for records and quash and set aside the proceedings of the land Acquisition Officer (Special Deputy Collector, Land Acquisition, M.C.H., Hyderabad in R.C.NO. A/303/94, dt 9.6.1995 and declare the same as null and void and delete the name of the petitioner from the said proceeding dt.9-6-1995 and to restrain the respondents from taking any steps under land Acquisition Act in respect of house No.5-9-261/2&3 of the petitioner at king koti road, Hyderabad by issuing of writ of mandamus or any other appropriate writ or order or direction or an alternatively to declare that the said proceeding under R.C.A/303/94 dt.9.6.95 of the 2nd respondent do not pertain to the petitioner property.

Counsel for the Petitioner: MR.P.NAGESWAR SREE

Counsel for the Respondent No: GP FOR LAND ACQUISITION

The Court made the following :

ORDER:

The writ petition is filed by the petitioners, seeking a writ of mandamus to declare the proceedings of the 2nd respondent in R.C.A.No.303/94, dated 9.6.1995 as null and void and delete the name of the petitioner from the said proceedings and to restrain the respondents from taking any steps under Land Acquisition Act in respect of house bearing Door No.5-9-261/2&3 of the petitioner at King Koti Road, Hyderabad and to declare that the said proceedings under R.C.A/303/94, dated 9.6.1995 of the 2nd respondent does not pertain to the petitioner property.

The case of the petitioner, in brief, is that he is the owner and possessor of the

house bearing No.5-9-261/2 &3, known as “Kamineni House” situated at King Koti Road, Hyderabad consisting of an area of 939-21 Sq. Mtrs. The petitioner with a view to make certain additions to the house bearing No.5-9-261/2 and 3, made an application dated 8.8.1994 to the 4th respondent Circle. The 5th respondent vide his letter No.261/2 and 3/9/5/9H dated 10.8.1994 refused the permission for making the addition on the ground that the same does not comply with H.M.C.Act,1955 and Building Byelaws and zoning regulations. Against the said orders of the 5th respondent the petitioner has preferred an appeal before the 3rd respondent dated 3.10.1994. To the knowledge of the petitioner, no notification was published in any A.P. Gazette or News paper under Land Acquisition Act proposing to acquire any part of the building for the purpose of widening the said bye-lane.

Petitioner further submitted that no notice under Section 5-A was received by the petitioner herein in order to submit his objection and further the address shown in the proceedings of the 2nd respondent is apparently wrong and the said premises does not belong to the petitioner. Further, the name of the petitioner was also shown as Kamuri Suryanarayana, which is also evidently wrong. The said acquisition proceedings evidently do not belong to the petitioner’s property but the said proceedings were addressed in the name of K.Suryanarayana. The State Government has no right to issue any notification under Section 4 or Section 5A of the Land Acquisition Act. The petitioner so far has not noticed any notification proposing to acquire 10 Ft on Eastern side of the petitioner’s house bearing No.5-9-261/2 & 3 Kamineni House, King Koti, Hyderabad in respect of the said house proposing to acquire 10 feet along the road on Eastern side. But suddenly the petitioner on 4.7.1995 had received the copy of the said proceedings of the Spl. Dy. Collector, Land Acquisition, MCH, Hyderabad dated 9.6.1995 in respect of the proceedings of the enquiry said to have been conducted by the said Spl. Dy. Collector in respect of house bearing No.5-9-262 at All Saints Church Road, belonging to Kamuri Suryanarayana. Thus, the question of the said association submitting any objection in respect of the said side lane does not arise. These proceedings evidently does not pertain to the house of the writ petitioner. However, as a matter of caution and without

prejudice, this writ petition is filed seeking for a declaration and order that there are no acquisition proceedings in respect of the house of petitioner bearing MCH Door No.5-9-261/2 &3, Kamineni House king Koti Road, Hyderabad and even if any such notification exists or issued under Sec.4 of the Land Acquisition Act in respect of the said house and any proceedings said to have been conducted under Section 5(a) of the Land Acquisition Act and the proceedings in RC.No.A/3 03/94, dated 9.6.1995 of Spl. Dy. Collector Land Acquisition, MCH, Hyerabad shall be illegal and unlawful and are null and void.

Counter affidavit has been filed at length by the respondents contending that the material allegations contained therein are neither true nor correct and the said allegations do not disclose any valid or substantial grounds for grant of any relief under Article 226 of the Constitution of India. It is further contended that it is a fact that the petitioner has applied for permission to construct the additions to the existing building bearing No.5-9-261/2 &3 situated at King Koti before the 5th respondent on 8.8.1994. After due scrutiny, the permission applied for was refused and the same was informed to the petitioner vide lr. No. 261/2&3/9/5/94, dated 10.8.1994 as the schedule premises in question is getting affected in the proposed 40'-0' wide road widening of all Saints Church road on eastern side and 60'-0" wide road widening of King Koti road on Southern side as per Zonal Development Plan for Zone-VII. In reply to para-3, it is further contended that the 2nd respondent herein, on receipt of requisition from the Assistant City Planner, Circle VI had initiated the land acquisition proceedings as per Land Acquisition Act to acquire an extent of 193.58 square yards in H.No.5-9-262 belonging to Smt. Kamineni Suryanarayana, but not in P.No.5-9-261/2 to 3 as stated in the affidavit. In response to 5-A notice, one Sri B.Shivaiah President of Chemist and Druggist Association had submitted a petition on 7.6.1995 stating that he is the owner of half of the portion in house bearing D. No. 5-9-262 and in regard to other half the Supreme Court had given a decree in their favour.

It is further contended that in reply to para-4, the land acquisition proceedings are confined to H.No.5-9-262 but not to H.No.5-9-261/2 &3 and the fear of the petitioner is imaginary and baseless and that the petition may be dismissed as

there is no cause of action in regard to property in question.

It is further contended that in reply to ground (a) the land acquisition proceedings in respect of H. No.5-9-262 is as per the Land Acquisition Act and the contention of the petitioner is not based on facts and in reply to ground b) the proceedings of the then respondent dated 9.6.1995 are perfectly legal and are in accordance with the Act and are for acquisition of 193-58 square yards of land in H.No.5-9-262. Petitioner himself admits that he is the absolute owner and possessor of H.No.5-9-261/2&3 and hence he has no legal right to question the L.A. proceedings against the house bearing No.5-9-262, which does not belong to him. In reply to ground (c) a requisition was received from the Assistant City Planner, Circle 6 for acquisition of 193.58 square yards of land in P. No. 5-9-262 and L.A. Proceedings No.A/356/94, dated 9.6.1995 were initiated in respect of this property. The other allegations were also denied by para wise. But the main contention of the respondents is that the 2nd respondent being the land acquisition officer is competent as per the Act to initiate proceedings under Sections 4, 5-A and 6 of the Act in respect of P No. 5-9-262 and there is no arbitrary exercise of power or violation of law and principles of natural justice and hence prayed to dismiss the writ petition.

Heard the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition. Perused the record.

Learned counsel for the petitioner submits that the petitioner is the owner of the house bearing D. No. 5-9-261/2 & 3, which does not call for application of any of the byelaws prescribed under the Act and hence the proceedings of the respondents, which may be initiated in respect of the house of the petitioner may be struck down. On the other hand, learned Government Pleader argued that the proceedings in the instant case are against the house bearing D. No. 5-9-262, but not against the house of the present petitioner and the said fact is clearly mentioned in their Counter affidavit in para No. 4 and hence the cause of the writ petitioner is merely an imaginary and does not survive for any more

and hence prayed to dismiss the writ petition as baseless.

Having regard to the facts and circumstances of the case that since the cause of the writ petitioner in filing the present writ petition is only an imaginary and in view of the statement made in paragraph-4 of the Counter, that the Land Acquisition Proceedings are confined to house No.5-9-262, but not to house No.5-9-262/2 and 3, no further orders are necessary. Recording the same, the writ petition is closed.

07-10-2004

MRKR

To

1 The Secretary, Municipal Administation and Urban Development, State of A.P. Secretariat, Hyderabad.

2 The Special Dy. Collector, Land Acquisition Muncipal Corporation of Hyderabad. Tank Bund, Hyderabad.

3 The Principal Secretary Housing and Municipal Administration Government of A.P. Secretariat, Hyderabad.

4 The Chairman, Municipal Corporation of Hyderabad, Hyderabad

5 The Assistant City Planer, Municipal Corporation of Hyderabad. Circle-VI, Putlibowli, Hyderabad.

6 Two CCs to GP for land Acquisition, High Court buildings, Hyderabad.

7 Two CD copies.